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When recorded, return to:

Sunrise Limited Partnership  
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100 West Washington, 23rd Floor  
Phoenix, Arizona 85003-1899

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
WARNER RANCH LANDING

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AND RESTRICTIONS  
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WARNER RANCH LANDING

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WARNER RANCH LANDING

This Declaration of Covenants, Conditions and Restrictions is made as of the 23rd day of September, 1987, by FIRST SERVICE TITLE AGENCY, INC., an Arizona corporation, as the "Declarant," and SUNRISE LIMITED PARTNERSHIP, an Illinois limited partnership doing business in the State of Arizona as S Limited Partnership, as "Developer," with reference to the following:

A. Declarant, as trustee of its Trust No. 1080, is the owner of fee title to the Property, and Developer is the sole beneficiary of said trust.

B. By virtue of the Declaration of Annexation, the Property is subject to the Master Declaration.

C. Developer and Declarant intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Property. Developer and Declarant desire to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Developer and Declarant hereby declare that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE I

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time

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1 to time in accordance with the provisions thereof and with the  
 2 applicable provisions of this Declaration, the Bylaws and the  
 statutes and regulations of the State of Arizona.

3 1.2 "Annual Assessments" shall mean those Assessments  
 4 computed and levied as provided in Section 8.2 of this  
 Declaration.

5 1.3 "Assessments" shall mean the Annual Assessments  
 and the Special Assessments.

6 1.4 "Association" shall mean Warner Ranch Landing  
 7 Association, an Arizona non-profit corporation, and its  
 successors and assigns.

8 1.5 "Board" shall mean the group or body of persons  
 9 elected in accordance with the provisions of the Articles, the  
 Bylaws and the statutes and regulations of the State of  
 10 Arizona, in which group or body is vested the management of the  
 affairs of the Association, and shall be equivalent in meaning  
 11 to the term "board of directors," as defined in A.R.S. Section  
 10-1002(6), as in effect at the date hereof.

12 1.6 "Bylaws" shall mean the Bylaws of the  
 13 Association, as the same Unofficial Document be amended from time to time in  
 accordance with the provisions thereof and with the applicable  
 14 provisions of this Declaration, the Articles and the statutes  
 and regulations of the State of Arizona.

15 1.7 "Common Area" shall mean all real property  
 16 (including the improvements thereto) owned by the Association  
 for the common use and enjoyment of the Owners. The Common  
 17 Area to be owned by the Association at the time of the convey-  
 ance of the first Lot to a retail purchaser shall be Tracts A,  
 18 B and E, as established by and depicted on the Plat. It is  
 not, however, intended that Tracts C, D, F and G (as estab-  
 19 lished by and depicted on the Plat) are to be Common Area;  
 rather, said Tracts C, D, F and G will be transferred and  
 20 conveyed, not later than the time of the conveyance of the  
 first Lot to a retail purchaser, to the Master Association,  
 21 which shall hold title thereto and be responsible for the main-  
 tenance thereof as "common area" of the Master Association pur-  
 22 suant to the Master Declaration.

23 1.8 "Common Expenses" shall mean the actual and esti-  
 24 mated expenses of operating the Association, including any rea-  
 25 sonable reserves, all as may be found to be necessary and  
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1 appropriate by the Board pursuant to this Declaration or pur-  
 2 suant to the Articles or the Bylaws.

3 1.9 "Declarant" shall mean First Service Title  
 4 Agency, Inc., an Arizona corporation, serving in its capacity  
 as trustee of its Trust No. 1080, and its successors and  
 assigns.

5 1.10 "Declaration" shall mean this Declaration of  
 6 Covenants, Conditions and Restrictions, as the same may be  
 amended from time to time.

7 1.11 "Declaration of Annexation" shall mean that cer-  
 8 tain Declaration of Annexation Recorded on 9-28-87, 1987,  
 at Recorder's No. 87-600760, whereby the Property was  
 subjected to the Master Declaration.

9 1.12 "Developer" shall mean Sunrise Limited  
 10 Partnership, an Illinois limited partnership doing business in  
 the State of Arizona as S Limited Partnership, and any assignee  
 11 of the rights and duties granted or reserved to the Developer  
 herein, which assignment shall be evidenced by a duly executed  
 12 and acknowledged Recorded instrument. The term "Developer"  
 shall in no event mean or refer to a retail Lot buyer.

Unofficial Document

13 1.13 "Eligible Mortgage Holder" shall mean any holder  
 14 (as evidenced by a Recorded instrument) of a First Mortgage who  
 or which shall have made written request to the Association for  
 15 notice of any proposed action that, pursuant to Section 10.2 or  
 Section 10.11, requires the consent of a specified percentage  
 16 of Eligible Mortgage Holders (which written request must con-  
 tain the name and address of the Eligible Mortgage Holder and  
 17 the Lot number or street address of the Lot against which the  
 First Mortgage held by said Eligible Mortgage Holder is  
 18 Recorded).

19 1.14 "First Mortgage" shall mean a Mortgage Recorded  
 20 against a Lot which has priority over any and all other  
 Mortgages Recorded against that Lot.

21 1.15 "Lot" shall mean and refer to a lot into which  
 the Property is subdivided as set forth in the Plat. In no  
 22 event shall the term "Lot" mean or refer to all or any part of  
 the Common Area.

23 1.16 "Master Association" shall mean Warner Ranch  
 24 Association, an Arizona non-profit corporation, and its  
 successors and assigns.

25 1.17 "Master Declaration" shall mean that certain  
 26 Declaration of Covenants, Conditions and Restrictions for

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1 Warner Ranch recorded on January 24, 1985, at Recorder's No. 85  
2 033713 in the office of the Maricopa County, Arizona Recorder,  
as the same may be amended from time to time.

3 1.18 "Maximum Annual Assessment" shall mean the  
4 amount determined for each fiscal year of the Association in  
accordance with Subsection 8.1.5 of this Declaration.

5 1.19 "Member" shall mean any Person entitled to  
6 membership in the Association, as provided herein, provided,  
however, that there shall be only one Class "A" membership for  
each Lot, as further provided in Article III below.

7 1.20 "Mortgage" shall mean a deed of trust, as well  
8 as a mortgage, which, in either case, is Recorded against a Lot  
or any other part of the Property.

9 1.21 "Mortgagee" shall mean a beneficiary or holder  
10 of a deed of trust, as well as a mortgagee under a mortgage,  
11 which, in either case, is Recorded against a Lot or any other  
part of the Property.

12 1.22 "Occupant" shall mean any Person other than an  
13 Owner who occupies or is in possession of a Lot, whether as a  
lessee under a lease or otherwise.

14 1.23 "Owner" shall mean the Person or Persons who  
15 individually or collectively: (a) own fee title to a Lot (as  
16 evidenced by a Recorded instrument); or (b) hold the seller's  
17 or vendor's interest under a contract for conveyance, contract  
18 for deed, agreement for sale or similar contract through which  
a seller has conveyed to a purchaser equitable title in prop-  
erty and under which the seller is obligated to convey to the  
purchaser the remainder of the seller's title in the property,  
whether legal or equitable, on payment in full of all sums due  
under the contract. The term "Owner" shall not include:  
19 (i) any Person who holds an interest in a Lot merely as secu-  
rity for the performance of an obligation; or (ii) a lessee,  
20 tenant or other Occupant of a Unit. Declarant shall be the  
"Owner" of each Unit with respect to which Declarant holds the  
21 interest required by this Section 1.23 and, in addition, shall  
be deemed to be the "Owner" of each Lot to which title is held  
22 by a trustee (other than the trustee of a deed of trust) for  
the benefit of Declarant. Notwithstanding Subsection 1.23(a),  
23 in the case of a Lot, the fee title to which is vested in a  
trustee under a deed of trust pursuant to Chapter 6.1 of Title  
24 33 of the Arizona Revised Statutes, the "Owner" of that Lot  
shall be deemed to be the owner of the trustor's interest under  
25 the deed of trust.

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1 1.24 "Person" (whether or not such term is  
2 capitalized herein) means a natural person, corporation,  
partnership, trustee or other legal entity.

3 1.25 "Phase" shall mean any one of the portions of  
4 the Property described and identified by a phase number or  
5 letter (or number and letter) on Exhibit "B" attached hereto  
6 and incorporated herein by reference. The numbers or letters  
7 (or numbers and letters) assigned to Phases hereby are and  
8 shall be for reference only and shall not control the order of  
9 development or sale of Lots within any Phase or from Phase to  
10 Phase. Developer shall retain full discretion as to the order  
11 and timing of the development and sales of Lots within any  
12 Phase or from Phase to Phase.

13 1.26 "Plat" shall mean that certain plat of Warner  
14 Ranch Landing recorded in Book 315 of Maps, page 37, in the  
15 office of Maricopa County, Arizona Recorder, as and if amended.

16 1.27 "Property" shall mean the real property  
17 described in Exhibit "Unofficial Document" attached hereto and shall further  
18 refer to such additional property, if any, as may hereafter be  
19 annexed thereto pursuant to Article VI hereof or as is now or  
20 may hereafter be owned in fee simple by the Association.

21 1.28 "Record", "Recording", "Recorded" and  
22 "Recordation" shall mean placing or having placed an instrument  
23 of public record in the official records of Maricopa County,  
24 Arizona, or of such other governmental authority, office or  
25 official with which or whom the applicable laws of the State of  
26 Arizona prescribe that documents affecting title to real prop-  
erty in the area including the Property are to be placed of  
public record.

1.29 "Residential Unit" shall mean any structure  
constructed on a Lot which is intended for use and occupancy as  
a residence by a single household.

1.30 "Special Assessments" shall mean those  
Assessments levied in accordance with Section 8.3 hereof.

## ARTICLE II

### PROPERTY RIGHTS

Every Owner shall have a non-exclusive right and ease-  
ment of enjoyment in, to and over the Common Area, subject to  
any restrictions or limitations contained herein or in any  
instrument conveying to the Association or subjecting to this  
Declaration such property, and subject further to the reason-  
able rules and regulations of the Association. Any Owner may

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1 assign his, her or its right of enjoyment to (and share the  
 2 same with) the members of his or her household and assign the  
 3 same to and share the same with his, her or its tenants and  
 4 invitees subject to the provisions of this Declaration and to  
 5 reasonable regulation by the Board and otherwise in accordance  
 6 with such procedures as the Board may adopt.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

7 3.1 Membership. The Association shall have two (2)  
 8 classes of membership, Class "A" and Class "B," as follows:

9 3.1.1 Class "A". There shall be one Class "A"  
 10 membership in the Association for each Lot. Each such  
 11 membership shall be held by the Owner (from time to time) of  
 12 such Lot and shall be appurtenant to and may not be separated  
 13 from ownership of such Lot. The foregoing is not intended to  
 14 include Persons who hold an interest merely as security for the  
 15 performance of an obligation, and the giving of a security  
 16 interest shall not terminate Unofficial Document Owner's membership. No Owner,  
 17 whether one or more Persons, shall have more than one  
 18 membership per Lot owned. In the event any Lot is owned by two  
 19 or more Persons, whether by joint tenancy, tenancy in common,  
 20 community property or otherwise, the membership as to such Lot  
 21 shall be joint, provided, however, that such Persons shall  
 22 jointly designate to the Association in writing one of their  
 23 number who shall have the power to vote said membership, and,  
 24 in the absence of such designation and until such designation  
 25 is made, the Board shall make such designation and such design-  
 26 nation shall be binding for all purposes. In no event shall  
 more than one (1) Class "A" membership exist for each Lot.  
 Notwithstanding the foregoing, so long as the Class "B"  
 membership is in existence, no Class "B" Member shall at the  
 same time be a Class "A" Member nor shall a Class "B" Member  
 have any Class "A" votes, and the membership and number of  
 votes of the Class "B" Member(s) shall be determined in accor-  
 dance with Subsections 3.1.2 and 3.2.2.

21 3.1.2 Class "B". Class "B" Members shall be  
 22 Developer and any assignee of all or any part of Developer's  
 23 Class "B" membership rights.

24 3.2 Voting The voting rights of the Class "A" and  
 25 Class "B" Members are as follows:

26 3.2.1 Class "A". Each Class "A" Member shall be  
 entitled on all issues to one (1) vote for each Lot with  
 respect to which such Member holds the interest required for  
 membership by Subsection 3.1.1 above. When more than one

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1 Person holds such interest in any Lot, there shall be only one  
 2 (1) vote with respect to such Lot, which vote shall be exer-  
 3 cised by the Person designated to exercise the power to cast  
 4 such vote, as provided in Subsection 3.1.1. Any attempt to  
 5 cast a vote appurtenant to a Lot in a manner inconsistent with  
 6 that designation shall result in the suspension of the power to  
 7 cast such vote until such time as such vote is cast in accor-  
 8 dance with that designation. Any Owner of a Lot which is  
 leased or which is subject to a valid, outstanding and recorded  
 executory agreement of sale may, in the lease, agreement of  
 sale or other written instrument, assign the voting right  
 appurtenant to the Lot to the lessee of the Lot or to the pur-  
 chaser of the Lot under such agreement of sale, as applicable,  
 provided that a copy of such instrument is furnished to the  
 Secretary of the Association prior to any meeting.

9           3.2.2 Class "B". The Class "B" Member or Members  
 10 shall be entitled to three (3) votes for each Lot owned by such  
 11 Class "B" Member or Members. Developer shall have the right,  
 12 at any time and from time to time, to assign all or any part of  
 13 its voting rights appurtenant to its Class "B" membership  
 14 rights (as well as all <sup>Unofficial Document</sup> other rights appurtenant thereto)  
 15 to one or more persons or entities acquiring, for purposes of  
 16 development and sale, any part of the Property. Further,  
 17 Developer shall have the right, at any time and from time to  
 18 time, to designate an individual or individuals to exercise  
 19 Developer's voting rights (whether appurtenant to Class "A" or  
 20 Class "B" membership), provided, however, that such designation  
 shall not act as an assignment by Developer of its membership  
 or voting rights hereunder. Upon the earlier to occur of:  
 (i) January 1, 1993; or (ii) the time at which the total number  
 of Class "A" votes outstanding (as determined pursuant to  
 Subsection 3.2.1) equals (or exceeds) the total number of Class  
 "B" votes outstanding (as determined pursuant to the preceding  
 provisions of this Subsection 3.2.2), the Class "B" membership  
 shall terminate and be deemed converted to a Class "A"  
 membership, whereupon the membership and voting rights of  
 Developer (and any assignee of Developer's Class "B" membership  
 rights) shall be determined in accordance with Subsections  
 3.1.1 and 3.2.1.

#### 21                           ARTICLE IV

#### 22                           MAINTENANCE

23           4.1 Association's General Responsibilities. The  
 24 Association shall maintain and keep in good repair the Common  
 25 Area (and certain other areas, as more expressly provided in  
 26 this Section 4.1), the costs of such maintenance to be Common  
 Expenses of the Association (subject to any insurance then in  
 effect). This maintenance shall include, but not be limited to:

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1 4.1.1 maintenance, repair and replacement of all  
2 landscaping and other flora, structures and improvements  
situated upon the Common Area, including any perimeter or  
boundary walls;

3 4.1.2 maintenance, repair and replacement of  
4 landscaping and flora in or upon public rights-of-way within or  
immediately adjacent to the Property (except as provided  
5 below);

6 4.1.3 maintenance, repair and replacement of  
landscaping and signs within areas designated on the Plat as  
7 "landscape easements," "landscape and wall easements" or "land-  
scape and sign easements" (or similar designations);

8 4.1.4 maintenance, repair and replacement of the  
9 side facing a street or portion of the Common Area of any  
boundary or perimeter wall situated within areas designated on  
10 the Plat as "wall easements" (or similar designations); and

11 4.1.5 <sup>Unofficial Document</sup> maintenance and repair of any drainage  
easements upon or across the Common Area.

12 Notwithstanding the foregoing: (a) landscaping and flora upon  
13 or in the public right-of-way for Warner Ranch Drive, or in  
areas of the Property adjacent to said public right-of-way des-  
14 ignated on the Plat as being "landscape easements," "landscape  
and wall easements" or similar designations, shall be the  
15 responsibility of the Master Association pursuant to the Master  
Declaration; and (b) maintenance of the side facing any public  
16 right-of-way of any boundary or perimeter walls situated upon  
the Property along Warner Ranch Drive shall be the responsibil-  
17 ity of the Association (unless such maintenance responsibility  
is assigned to, or expressly assumed by, the Master Association  
18 in or pursuant to the Master Declaration), while the mainte-  
nance of the side of such boundary or perimeter walls (and of  
19 boundary or perimeter walls between Common Area and an Owner's  
Lot) facing an Owner's Lot shall be the responsibility of such  
20 Owner.

21 4.2 Front Yard Landscaping. In addition, the  
Association shall be responsible for maintaining and keeping in  
22 good repair on each and every Lot, as a Common Expense of the  
Association, the landscaping and flora situated in or upon the  
23 "front yard" of each and every Lot. For purposes hereof, the  
"front yard" of a Lot shall mean and refer to such portion of  
24 that Lot as is adjacent to or abutting public or private  
roadways or adjacent to or abutting any part of the Common  
25 Area, except where such portion of that Lot is screened from  
view from such roadways or Common Area by a wall or other  
26 structure.

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1           **4.3 Maintenance of Owner's Structures.** Each Owner  
 2 shall be responsible for the maintenance, cleaning, painting,  
 3 repair and general care of the Residential Unit and any other  
 4 structure existing or constructed upon such Owner's Lot, and,  
 5 in particular, each Owner shall cause the exterior of said  
 6 Residential Unit or other structure to be maintained in good  
 7 condition and repair and in an attractive state consistent with  
 8 general community standards within the Property. In the event  
 9 that the Association shall determine, by the affirmative vote  
 10 of a majority of the votes of each class of Members represented  
 11 in person or by valid proxy at a meeting called for such pur-  
 12 pose, that any Owner is in breach of such Owner's obligation to  
 13 cause the exterior of the Residential Unit or other structure  
 14 on such Owner's Lot to be maintained in good condition and  
 15 repair and in an attractive state consistent with general com-  
 16 munity standards within the Property, the Association shall  
 promptly give such Owner written notice of such determination,  
 including a reasonably detailed list or description of the  
 repairs, maintenance or other work required to cure such  
 Owner's breach, and in the event the Owner shall not have cured  
 such breach within thirty (30) days after the date of said  
 written notice, the Association shall cause the repairs, main-  
 tenance or other work to be performed so as to cure such  
 Owner's breach, and the Association's costs in doing so,  
 together with interest Unofficial Document e date of expenditure at the rate  
 set forth in Section 10.8 of this Declaration, shall constitute  
 a lien on such Owner's Lot, which lien shall have the priority  
 and may be enforced in the manner described in Section 8.4 of  
 this Declaration. The Association shall have an easement on,  
 over, across and through each Lot to permit it to carry out its  
 duties and obligations under this Article IV.

17           **4.4 Publicly-Dedicated Areas.** Except as expressly  
 18 provided in this Article IV (and, in particular, in  
 19 Subsection 4.1.2), and except as may otherwise be required by  
 20 applicable law, the Association shall have no responsibility to  
 maintain any areas within the Property (including, but not  
 limited to, public streets) which are dedicated to or the  
 responsibility of a municipality or other governmental entity.

21           **4.5 No Discrimination.** The provision of services in  
 22 accordance with this Article shall not be deemed to be discrim-  
 ination in favor of or against any Owner.

23           **4.6 Conformance with Landscape Plans.** All landscap-  
 24 ing shall conform to the landscape plans for the Property, as  
 25 approved by the City of Tempe, where applicable.  
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## ARTICLE V

INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES5.1 Insurance to be Obtained by the Association.5.1.1 Hazard Insurance.

a. The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), with such amount to be redetermined <sup>Unofficial Document</sup> annually by the Board with the assistance of the insurer or insurers providing such coverage.

b. The policy or policies providing the insurance required by this Subsection 5.1.1 shall provide that: (i) any insurance trust agreement will be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective agents, employees, guests and household members; (iii) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's invitees, agents, employees or household members), or of any member, officer or employee of the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners or their Mortgagees; and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.

c. The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain (if

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1 available at no additional cost or at such additional cost as  
 2 is not demonstrably unreasonable) the following endorsements  
 3 (or their equivalents): (i) "agreed amount" and "inflation  
 4 protection" endorsements; (ii) "increased cost of construction"  
 5 endorsement; (iii) "contingent liability from operation of  
 6 building laws or codes" endorsement; and (iv) "demolition cost"  
 7 endorsement.

8 d. The policy or policies providing the insur-  
 9 ance required by this Subsection 5.1.1 shall also contain a  
 10 steam boiler and machinery endorsement providing coverage in an  
 11 amount not less than the lesser of \$2,000,000 or the insurable  
 12 value of the building(s) housing such boiler and machinery, if  
 13 any.

14 e. Unless a higher maximum deductible amount is  
 15 required by applicable law, each policy providing the insurance  
 16 coverage required by this Subsection 5.1.1 shall provide for a  
 17 deductible not to exceed the lesser of \$10,000 or one percent  
 18 (1%) of the face amount of such policy.

19 5.1.2 Liability Insurance. The Board, acting on  
 20 behalf of the Association, shall obtain and maintain at all  
 21 times a comprehensive general liability policy insuring the  
 22 Association, each member of the Board and each Owner (and, so  
 23 long as Developer, or any Person with whom Developer contracts  
 24 directly for the performance of all or a substantial portion of  
 25 Developer's rights and obligations hereunder, or for the con-  
 26 struction of substantial improvements on the Property, retains  
 an interest in the Property or any Lot, insuring Developer and  
 such Person, if identified by Developer to the Association,  
 provided that any added premium cost or other expense resulting  
 from naming Developer or such Person as insureds shall be borne  
 by Developer or such other Person), against any liability to  
 the public or to any Owner or Occupant (and such Owner's or  
 Occupant's invitees, agents, employees and household members)  
 for death, bodily injury and property damage arising out of or  
 incident to the ownership or use of the Common Area or arising  
 out of or incident to the performance by the Association of its  
 maintenance and other obligations hereunder. The Board, with  
 the assistance of the insurer(s) providing such coverage, shall  
 review annually the amounts of coverage afforded by said com-  
 prehensive general liability policy or policies and adjust such  
 amounts of coverage as the Board deems appropriate, but in no  
 event shall said policy or policies provide coverage less than  
 One Million Dollars (\$1,000,000.00) for death, bodily injury  
 and property damage for any single occurrence. The policy or  
 policies providing such insurance shall, by specific endorse-  
 ment or otherwise, preclude denial by the insurer(s) providing  
 such insurance of a claim under such policy or policies because  
 of negligent acts or omissions of the Association or any

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1 Owner(s) (or of Developer or any other Person named as an  
insured or additional insured thereunder).

2           5.1.3 Flood Insurance. In the event any part of  
3 the Common Area is in a "special flood hazard area," as defined  
4 by the Federal Emergency Management Agency (or its successors),  
5 the Board, acting on behalf of the Association, shall obtain  
6 (and maintain at all times during which any part of the Common  
7 Area is in such a "special flood hazard area") a "master" or  
8 "blanket" policy of flood insurance covering all insurable  
9 improvements on the Common Area and covering any personal prop-  
10 erty situated from time to time within such improvements (to  
11 the extent such personal property is normally covered by the  
12 standard flood insurance policy available from time to time in  
13 the State of Arizona). Said insurance shall be in an amount  
14 not less than the lesser of: (a) 100% of the current replace-  
15 ment cost, from time to time, of all such insurable improve-  
16 ments (and such insurable personal property) located in the  
17 "special flood hazard area"; or (b) the maximum coverage avail-  
18 able for such insurable improvements and insurable personal  
19 property under the National Flood Insurance Program. Unless a  
20 higher maximum deductib<sup>Unofficial Document</sup> it is required by applicable law,  
21 the policy providing such insurance shall provide for a deduct-  
22 ible not to exceed the lesser of \$5,000 or one percent (1%) of  
23 the face amount of such policy.

24           5.1.4 General Provisions Governing Insurance.  
25 The insurance required to be obtained under Subsections 5.1.1,  
26 5.1.2 and 5.1.3 shall be written in the name of the Association  
as trustee for each of the Owners and for each Mortgagee (as  
their respective interests may appear) and shall be governed by  
the provisions hereinafter set forth:

17           a. All policies shall be written with one or  
18 more companies authorized to provide such insurance in the  
State of Arizona;

19           b. Exclusive authority to adjust losses under  
20 policies in force on property owned or insured by the  
Association shall be vested in the Board;

21           c. In no event shall the insurance coverage  
22 obtained and maintained by the Board hereunder be brought into  
23 contribution with insurance purchased by individual Owners,  
Occupants or their Mortgagees, and the insurance carried by the  
Association shall be primary;

24           d. Subject to the regulations of the State of  
25 Subsection 5.1.1(b) above, the Board shall make  
26 every reasonable effort to secure a waiver of subrogation from  
the insurer(s) which shall provide for a waiver of subrogation



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1 claims against the Board or the Owners and their respective  
 2 tenants, servants, agents and guests (if securing same will  
 impose on the Association no additional cost or only such rea-  
 sonable cost as the Board may approve, in its discretion);

3 e. Each policy providing insurance coverage  
 4 required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require  
 the applicable insurer to give not less than ten (10) days  
 5 written notice to the Association, and to each Mortgagee which  
 shall have given such insurer written notice of such  
 6 Mortgagee's interest in a Lot (which notice must include the  
 name and address of such Mortgagee), of any cancellation,  
 7 refusal to renew or material modification of such policy.

8 5.1.5 Fidelity Bonds. The Board, acting on  
 behalf of the Association, shall obtain and maintain at all  
 9 times adequate fidelity bond coverage to protect against dis-  
 honest acts on the part of officers, directors and employees of  
 the Association and all others who handle, or are responsible  
 10 for handling, funds held or administered by the Association,  
 whether or not such off<sup>Unofficial Document</sup> directors, employees or others  
 11 receive compensation for services they render to or on behalf  
 of the Association. Any independent management agent which  
 12 handles funds for the Association shall also obtain (and pay  
 for) such fidelity bond coverage with respect to its own  
 13 activities (and those of its directors, officers and employees,  
 whether or not such directors, officers or employees receive  
 14 compensation for services rendered). Such fidelity bonds:  
 (a) shall name the Association as obligee; (b) shall be issued  
 15 by one or more companies authorized to issue such bonds in the  
 State of Arizona; and (c) shall be in an amount sufficient to  
 16 cover the maximum total of funds reasonably expected by the  
 Board to be in the custody of the Association or such agent at  
 17 any time while such bond is in force, but in no event shall the  
 amount of such fidelity bond coverage be less than the sum of  
 18 three (3) months' Annual Assessments on all Lots, plus the  
 total of funds held in the Association's reserves. Each such  
 19 fidelity bond shall provide that the issuer thereof shall pro-  
 vide not less than ten (10) days written notice to the  
 20 Association and to each Eligible Mortgage Holder before such  
 bond may be cancelled or substantially modified for any reason.

21 5.1.6 Workers' Compensation Insurance. The  
 22 Board, acting on behalf of the Association, shall obtain and  
 maintain workers' compensation insurance if and to the extent  
 23 necessary to meet the requirements of applicable law.

24 5.1.7 Cost of Insurance. All premiums for the  
 insurance or bonds required to be obtained by the Board by this  
 25 Section 5.1 shall be Common Expenses (except that, as provided  
 in Subsection 5.1.5 above, the cost of the fidelity bond  
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1 required to be furnished by any independent management agent  
 2 shall be paid by such agent, and, as provided in  
 3 Subsection 5.1.2 above, any added cost of naming Developer, or  
 4 any Person with whom or which Developer contracts directly for  
 5 the performance of all or a substantial portion of Developer's  
 6 obligations hereunder, or for the construction of improvements  
 7 on the Property, shall be borne by Developer or such other  
 8 Person). The Board shall not be liable for failure to obtain  
 9 or maintain any of the insurance coverage required by this  
 10 Section 5.1, or for any loss or damage resulting from such  
 11 failure, if such failure is due to the unavailability of such  
 12 insurance coverage from reputable companies authorized to pro-  
 13 vide such insurance in the State of Arizona, or if such insur-  
 14 ance coverage is available only at an unreasonable cost.

8 5.1.8 Subsequent Changes in Insurance

9 Requirements. It is the intention of this Article V (and, in  
 10 particular, of this Section 5.1), to impose upon the  
 11 Association the obligation to obtain and maintain in full force  
 12 and effect at least those types and amounts of insurance as are  
 13 required, at the time this Declaration is recorded, by the  
 14 Federal National Mortgage Association, Federal Home Loan  
 15 Mortgage Corporation, Veterans Administration and Federal  
 16 Housing Administration. However, notwithstanding any provision  
 17 of this Declaration to the contrary, should any or all of said  
 18 agencies subsequently amend or modify their respective require-  
 19 ments regarding the insurance coverage required to be main-  
 20 tained by the Association, the Board, acting on behalf of the  
 21 Association, shall, promptly upon receiving notice of such  
 22 amendment or modification from any such agency, from any Owner  
 23 or Eligible Mortgage Holder or from Developer, obtain such  
 24 additional, modified or amended policy or policies of insurance  
 25 as may be necessary to conform to such amended or modified  
 26 requirements. Should such requirements of any such agency con-  
 flict with the requirements of any other such agency or with  
 applicable provisions of law, the Board, acting on behalf of  
 the Association, shall diligently work with such agency or  
 agencies to resolve such conflict and shall thereafter obtain  
 and maintain such additional, modified or amended policy or  
 policies of insurance as may be necessary to conform with the  
 requirements of such agencies, taking into account the resolu-  
 tion of said conflict. In the event the Board, after exercise  
 of such diligence, is unable to resolve such conflict, the  
 Board, acting on behalf of the Association, shall exercise its  
 good faith business judgment and obtain and maintain in full  
 force and effect such insurance coverage as the Board, in the  
 exercise of such judgment, deems to conform as closely as pos-  
 sible with the applicable requirements of all such agencies,  
 and of law, taking into account such conflict.

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1                   5.2 Insurance to be Obtained by the Owners.

2                   5.2.1 Public Liability Insurance. It shall be  
3 the individual responsibility of each Owner to provide, as such  
4 Owner sees fit and at such Owner's sole expense, such compre-  
5 hensive public liability insurance as such Owner may desire  
6 against loss or liability for damages and any expense of  
7 defending against any claim for damages which might result from  
8 the ownership, use or occupancy of such Owner's Lot.

9                   5.2.2 Hazard and Contents Insurance. It shall be  
10 the individual responsibility of each Owner to provide, as such  
11 Owner sees fit and at such Owner's sole expense, such fire,  
12 liability, theft and any other insurance as such Owner may  
13 desire covering the Residential Unit and any other structure on  
14 such Owner's Lot, as well as any and all fixtures and personal  
15 property upon such Lot or in such Residential Unit or other  
16 structure(s).

17                   5.3 Casualty Losses.

18                   5.3.1 Damage and Destruction.

19                   a. Immediately after any damage or destruction  
20 by fire or other casualty Unofficial Document all or any part of the property  
21 required to be insured by the Association under Section 5.1  
22 above, the Board or its duly authorized agent shall:  
23 (i) proceed with the filing and adjustment of all claims aris-  
24 ing under such insurance; (ii) obtain reliable and detailed  
25 estimates of the cost of repair or reconstruction of the dam-  
26 aged or destroyed property; and (iii) upon receipt of the pro-  
ceeds of such insurance and except as is otherwise provided in  
this Subsection 5.3.1, use such proceeds to repair or  
reconstruct the damaged or destroyed property. Repair or  
reconstruction, as used in this Article V, means repairing or  
restoring the property in question to substantially the same  
condition as that in which it existed prior to the fire or  
other casualty (or, where applicable, replacing the damaged or  
destroyed property with property substantially similar to the  
damaged or destroyed property as it existed prior to such dam-  
age or destruction).

                  b. Any major damage or destruction to the prop-  
erty required to be insured by the Association under Section  
5.1 above shall be repaired or reconstructed unless: (i) at a  
special meeting of the Members of the Association duly noticed  
and convened within sixty (60) days after the occurrence of  
such damage or destruction, the Members determine, by a vote of  
Owners owing not less than seventy-five percent (75%) of all  
Lots, not to so repair or reconstruct; and (ii) Eligible  
Mortgage Holders representing at least fifty-one percent (51%)

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1 of all Lots subject to First Mortgages held by Eligible  
 2 Mortgage Holders concur in such determination not to so repair  
 3 or reconstruct; and (iii) the office of the City Attorney for  
 4 the City of Tempe, Arizona, concurs in such determination not  
 5 to so repair or reconstruct (or waives in writing its right to  
 6 concur in or disapprove such determination). If for any reason  
 7 either the amount of the insurance proceeds to be paid as a  
 8 result of such damage or destruction, or reliable and detailed  
 estimates of the cost of repair or reconstruction, or both, are  
 not made available to the Association within said period, then  
 the period shall be extended until such information shall be  
 made or become available; provided, however, that such exten-  
 sion shall not exceed an additional sixty (60) days. The Board  
 shall determine whether any minor damage or destruction to the  
 Common Area should be repaired or reconstructed.

9 c. In the event that it is determined in the  
 10 manner described above that the damage or destruction of any  
 11 part of the Common Area shall not be repaired or reconstructed  
 and no alternative improvements are authorized, then and in  
 that event such property shall be maintained by the Association  
 in a neat and attractive condition as an undeveloped portion of  
 the Common Area.

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12 5.3.2 Excess or Deficiency of Proceeds. If the  
 13 damage or destruction for which the insurance proceeds are paid  
 14 is to be repaired or reconstructed and such proceeds are not  
 15 sufficient to pay the cost thereof, the Board shall, without  
 the necessity of a vote of the Members, levy an equal assess-  
 16 ment against the Owner of each Lot. Additional assessments may  
 17 be made in like manner at any time during or following the com-  
 18 pletion of any repair or reconstruction. Any assessments  
 levied pursuant to this Subsection 5.3.2 shall be deemed to be  
 a part of the Assessments and shall be secured by the lien cre-  
 19 ated by Section 8.4 below. If the funds available from insur-  
 20 ance exceed the cost of repair, such excess shall be used to  
 meet Common Expenses.

21 5.3.3 Repair or Reconstruction of Residential  
 22 Units. In the event of the destruction of a Residential Unit  
 23 or other structure on a Lot, or of damage to such Residential  
 24 Unit or other structure which, in the reasonable judgment of  
 the Board, materially affects the exterior appearance thereof,  
 the Board shall have the right, at its option, exercisable by  
 25 written notice to the Owner of the Lot upon which such  
 Residential Unit or other structure is situated, to require  
 26 such Owner to repair or reconstruct (or cause to be repaired or  
 reconstructed), at such Owner's expense (subject to any insur-  
 ance proceeds as such Owner may then or thereafter receive in  
 respect of such destruction or damage), such Residential Unit  
 or other structure within such period of time as shall be spec-